

Memorandum



Date: November 1, 2005

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: George M. Burgett
County Manager

Agenda Item No. 7(O)

Subject: Amendments to Section 2-11.16 of the Miami-Dade County Code, Responsible Wages and Benefits on County Construction Contracts

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the attached ordinance amending Section 2-11.16 of the Miami-Dade County Code pertaining to Responsible Wages and Benefits on County Construction Contracts. The proposed changes would: establish a revised method by which the required wages of laborers and mechanics performing construction work be increased uniformly on an annual basis; require that payments of wages shall not be less than the base hourly rate set forth in the contract specifications; delete the option of paying wages in the form of cash and require that payment of wages be in the form of check and/or money order; replace the current liquidated damages penalty of \$200.00 per employee per day for failure to pay appropriate wages, with a liquidated damage equal to a percentage of the amount of underpayment; and require bidders comply with payments of back wages and/or penalties on previous contracts prior to the award of future contracts.

BACKGROUND

On July 23, 2002, the Board approved Ordinance No. 02-129 amending Section 2-11.16 of the Code to provide for an annual review and increase in the required hourly wage rates of laborers and mechanics performing construction work over the term of a contract while utilizing the contract bid advertisement date as the benchmark for the update. The requirements of the ordinance would apply to contracts advertised after the date the Board approved the implementing amendments to the corresponding administrative order.

Prior to July 23, 2002, contractors and all subcontractors performing work on County construction projects were required to pay laborers and mechanics a combined hourly wage rate consisting of a base rate plus health and pension benefits. This assigned wage rate remained fixed throughout the duration of the contract. The frozen rate of pay has not historically been an issue due to the general duration of County contracts. However, with the increase in large Construction Management type contracts including the Performing Arts Center and the South Terminal Development Program, the frozen rate of pay could last upwards of 5 - 8 years.

During the process of addressing proposed changes to the Code, it was determined that an annual increase to the contract hourly pay rates benchmarked by the bid advertisement date was not the most efficient manner in which to obtain the desired goal since it would not only be difficult for contractors with multiple contracts to keep track of the applicable wage rate, but also difficult to monitor since at any given time there are over 300 open active construction contracts with different applicable wage rates. Having only one wage schedule applicable to all contracts awarded after the implementation date and updated every January 1st thereon would help facilitate the effective administration and enforcement of the Responsible Wage requirements.

Because the July 23rd amendments were strongly supported by local area organizations that represent employees and contractors, the Department of Business Development (DBD) held several meetings with representatives of these organizations, the construction industry and managing agencies to review the proposed changes. As a result of these meetings additional

clarifications, improvements and modifications to the Code were drafted and are being proposed in an effort to deter contractors from utilizing language within the ordinance to circumvent its intent. Outlined below are proposed changes to the Code that have been discussed and agreed upon by the ordinance's stakeholders:

1. Base Rate:

The existing language requires contractors to pay a minimum hourly rate equal to the combined overall dollar value of a base per hour rate of pay plus the value of hospitalization, medical, pension and life insurance benefits provided or a cash equivalent. Contractors could pay below the base rate of pay as long as the combined overall rate was equal to that provided in the schedule. Under the current language a laborer who should be paid a base rate of \$12 plus \$3.52 for benefits for a combined rate of \$15.52, can actually receive a base pay of \$5.15 per hour and the remaining monies in benefits providing the contractor a savings in employment taxes and insurance costs but circumventing the intent of providing the laborer with a responsible wage. The proposed amendment requires that payment of wages shall not be less than the base hourly rate set forth in the contract specifications.

2. Payment of Wages by Check and/or Money Order:

The existing language allows payment of wages in the form of cash. The proposed change requires that payment of wages be in the form of check and/or money order to facilitate verification of required payments.

3. Liquidated Damages:

The existing language provides that in addition to any underpayment due, contractors shall pay two hundred dollars as liquidated damages for each employee per calendar day the employee is not paid the appropriate wage. The proposed change provides a more equitable system of penalties in that the liquidated damages for a first time offender is equal to 10% of the amount of underpayment. The value of liquidated damages increases to 20% for the second violation and 30% for the third violation. Contractors in violation a fourth time will be recommended for a mandatory debarment of no less than three (3) years. This amendment will change the County's general policy regarding delinquent vendors by providing more stringent consequences and restrictions for contractors who are found to owe underpaid wages or the fines imposed as specified above.

4. Enforcement Across Contracts:

The existing language does not provide for enforcement across contracts. The proposed amendment would require bidders comply with payments of back wages and/or penalties on previous contracts prior to the award of future contracts. While this language is more stringent than the County's general policy on delinquent vendors, it is recommended due to the nature of enforcement. Firms that fail to pay their employees is considered significant and as such, language must be added to the ordinance to allow for appropriate sanctions commensurate with the infraction.

The proposed amendments to the Code will provide a uniform date to which all County contracts will be updated. The remaining amendments are of an administrative nature and should not pose a fiscal impact to the County since the work can be accomplished with existing staff.


Assistant County Manager

Memorandum

MIAMI-DADE
COUNTY

Date: November 1, 2005

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: George M. Burgess
County Manager



Subject: Ordinance amending Section 2-11.16 of the Miami-Dade County Code, Responsible Wages and Benefits on County Construction Contracts

This ordinance amending section 2-11.16 of the Code of Miami-Dade County relating to contractors and subcontractor performing work on certain county construction contracts will not have a fiscal impact on Miami-Dade County.

The ordinance will change the method by which the required wages of laborers and mechanics performing construction work will be updated uniformly on an annual basis. In addition, the ordinance will make the payments of wages to no less than the base hourly rate set forth in the contract specification and will remove the option of paying wages in the form of cash.

The proposed changes will not require additional staff to monitor or implement.


Assistant County Manager

Fiscal00305



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: November 1, 2005

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Agenda Item No. 7(O)

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☐ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(O)

11-01-05

ORDINANCE NO. _____

ORDINANCE AMENDING SECTION 2-11.16 OF THE
CODE OF MIAMI-DADE COUNTY, FLORIDA,
PERTAINING TO MINIMUM OVERALL PER HOUR
WAGE RATES REQUIRED TO BE PAID TO
EMPLOYEES OF CONTRACTORS AND
SUBCONTRACTORS PERFORMING WORK ON
CERTAIN COUNTY CONSTRUCTION CONTRACTS;
PROVIDING PENALTIES; PROVIDING
SEVERABILITY, INCLUSION IN THE CODE AND AN
EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS

OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. Section 2-11.16 of the Code of Miami-Dade County, Florida, is hereby
amended to read as follows:¹

Sec. 2-11.16. County construction contracts.

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(b) The specifications for each competitively bid County contract in excess of one hundred thousand dollars (\$100,000.00) for the construction, alteration and/or repair, including painting or decorating, of public buildings or public works shall specify an initial overall per hour rate to be paid to each craft or type of employee necessary to perform the contract work as listed in local area nondiscriminatory negotiated contracts >>(hereinafter referred to for purposes of this subsection (b) as "negotiated contracts")<< between organizations which represent employees and contractors. In ascertaining the initial >>overall per hour<< rate to be paid, the minimum standard shall be the combined overall dollar value on an hourly basis of the wages >>(paid as set forth below)<< and of the hospitalization, medical, pension and life insurance benefits >>(paid as set forth below)<< for such [[~~classification~~]] >>craft

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

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or type of employee<< under the >>negotiated<< contracts in effect as of ~~[[the end of the quarter next preceding the quarter]]~~ >>January 1st of the calendar year<< in which said proposed bid is expected to be advertised, or, in the case of a lease or contract providing for privately funded construction on County-owned land subject to this Section, >>under the negotiated contracts in effect as of January 1st of the calendar year<< ~~[[the quarter]]~~ in which said proposed >>lease or<< contract is expected to be executed. >>Thereafter, the specifications shall provide that the overall per hour rate to be paid for work performed under the contract during each subsequent calendar year shall be the overall per hour rate in effect as of January 1st, of the year in which the work is performed.<< If a particular ~~[[classification]]~~ >>craft or type<< of employee is not listed in such >>negotiated<< contracts, in ascertaining the initial >>overall per hour<< rate to be paid those employees, the minimum standard shall be the combined overall dollar value on an hourly basis ~~[[on]]~~ >>of<< the "basic hourly rate of pay" (as defined in 29 CFR 5.24) >>(paid as set forth below)<< and of the fringe benefits payments >>(paid as set forth below)<< for hospitalization, medical pension and life insurance benefits for such ~~[[classification]]~~ >>craft or type of employee<< under the Secretary of Labor's wage determination (made pursuant to the provisions of the Davis-Bacon Act) in effect for Miami-Dade County, Florida, as of the end of the calendar >>year<< ~~[[quarter next preceding the calendar quarter]]~~ in which the proposed bid is expected to be advertised. The foregoing and the provisions of Section 2-11.16(e) notwithstanding, where not otherwise precluded by state or federal law, the overall per hour rate shall be the higher rate under this Section 2-11.16 or the rate of wages to be paid under the requirements of the Davis-Bacon Act; provided, further, that the overall per hour rate shall not be the higher rate if the federal government requires the County as a condition of receiving federal funds for a project to pay no more than the wages as determined by the U.S. Department of Labor under the Davis-Bacon Act on project contracts. The specifications for such contracts shall:

- (i) Include a sum certain in dollars and cents as an initial overall >>per<< hour~~[[ly]]~~ rate for each ~~[[classification]]~~ >>craft or type of employee<< to be paid for work performed during the period commencing on the date of issuance of the notice to proceed and ~~[[ending one year after the date of bid advertisement]]~~ >>continuing through the calendar year<< (or, in the case of a lease or contract providing for privately funded construction on County-owned land subject to this Section, ending ~~[[one year after the date of execution of the lease or contract]]~~ >>the last day of the calendar year in which the lease or contract was executed<<). The specifications shall further provide that the overall >>per<< hour ~~[[ly]]~~ rate to be paid for work

~~performed during the year period commencing [[one year after the date of bid advertisement (or date of execution, if applicable) and ending two years after the date of bid advertisement (or date of execution, if applicable) shall be the overall hourly rate (as determined in accordance with sub paragraph (b) above.) in effect as of the end of the quarter next preceding the quarter in which such year period commenced, irregardless of whether such rate is more or less than the initial overall hourly rate. Thereafter, the overall hourly rate to be paid for work performed during each subsequent year period shall be the overall hourly rate (as determined in accordance with subparagraph (b) above) in effect as of the quarter next preceding the quarter in which the subsequent year period commenced, irregardless of whether such subsequent rate is more or less than the initial overall hourly rate]] >>the next January 1st after the date of issuance of the notice to proceed (or, in the case of a lease or contract providing for privately funded construction on County-owned land subject to this Section after the date of execution of such lease or contract) shall be such rate (as determined in accordance with subsection (b) above) for that calendar year and shall be updated thereafter on each subsequent January 1st to the rate (as determined in accordance with subsection (b) above) for the ensuing calendar year until completion of the contract work;<<~~

- (ii) Mandate the contractor to whom the contract is awarded, and any >>of its<< subcontractor>>s performing any of the contract work<< ~~[[under him]]~~, pay not less than the specified ~~[[initial]]~~ overall >>per<< hour~~[[ly]]~~ rate adjusted over the term of the contract as provided in subsubsection (i) ~~[[above to all employees within such classifications employed in the performance of the contract]]~~; and
- (iii) Provide that the contractor, and any >>of its<< subcontractor >>s<< ~~[[under him]]~~, may fulfill the obligation to pay such specified overall >>per<< hour ~~[[ly]]~~ rate by payment ~~[[of wages, contributions to employees benefit plans, payments in cash, or any combination thereof]]~~ >>to the employee of the hourly wage rate listed in the negotiated contracts (or, if applicable, under subsubsection (i) above, the “basic hourly rate of pay” as defined in 29 CFR 5.24 contained in the Secretary of Labor’s wage determination) for such craft or type of employee plus either: (i) payment on the employee’s behalf

of the cost (on an hourly basis) of the hospitalization, medical, pension and life insurance benefits specified for such craft or type of employee; or, (ii) payment to the employee (in addition to the listed hourly wage rate, or "basic hourly rate of pay if applicable) of an amount equal to the hospitalization, medical, pension and life insurance benefits (on an hourly basis) contractors are required to provide under the negotiated contracts (or, if applicable, under subsection (i) above, an amount equal to the fringe benefit payments on an hourly basis for hospitalization, medical, pension and life insurance benefits contained in the Secretary of Labor's wage determination) for such craft or type of employee. Payments to employees shall be counted towards fulfillment of the above obligation only to the extent that such payments are made by check or money order<<; and

~~[(iv)]~~ Provide that the contractor shall pay to Miami-Dade County two hundred dollars (\$200.00) as liquidated damages for each employee of the contractor (or of any subcontractor under him) who performs any portion of the contract work for each calendar day, or portion thereof, that such employee is paid less than the said specified overall hourly rate; and

∗]] >>(iv)<< Provide that the contractor, and each subcontractor under him, shall post >>in<< a conspicuous place on the site where such contract work is performed: (1) the schedule of the specified overall >>per<< hour [[1y]] rate for each applicable classification specified by such negotiated contracts; (2) the amount of the liquidated damages for any failure to pay such rates; and, (3) the name and address of the responsible official in Miami-Dade County to whom complaints should be given; and

~~[(vi)]~~>>(v)<< Provide that there may be withheld from the contractor so much of accrued payments as may be considered necessary by the contracting officer to pay to employees employed by the contractor (or any subcontractor under him) in the performance of the contract work the difference between the overall >>per<< hour [[1y]] rate required by the contract to be paid employees on the work and the amounts received by such employees and not refunded to the contractor, and >>any of its<< subcontractor>>s<< ~~[[under him]]~~ or their agents; and

~~[[{vii}]]~~>>(vi)<< Require the contractor and each subcontractor under him to keep, or cause to be kept, accurate written records signed under oath as true and correct showing the names, Social Security numbers, and craft classifications of all employees performing work on said contract, the hours and fractions of hours for every type of work performed by each employee, the combined dollar value of all wages, any contributions to benefit plans ~~[[and any cash payments]]~~ >>and payments made<< ~~[[paid]]~~ to each employee >>of the overall per hour rate required by this Section<< and further require the contractor to submit to the County a list of all subcontractors and the names and Social Security numbers of all employees thereof who performed work each day on the contract and further require each subcontractor to also submit to the County a list of names and Social Security numbers of its employees who performed work each day on the contract; and

~~[[{viii}]]~~ >>(vii)<< Provide that no contractor (or subcontractor under him) may terminate an employee performing work on the contract because of the employee's filing a complaint regarding payment of required overall >>per<< hour ~~[[hr]]~~ rates.

(c) Miami-Dade County shall periodically examine the records required to be kept under subsection (vi ~~[[i]]~~) of subsection (b) of this section.

(d) The County Manager shall establish an administrative procedure for ~~[[the resolution of written complaints pertaining to underpayment of the required overall hourly rates by a contractor (or any subcontractor) under him.]]~~ >>monitoring compliance with and enforcement of the requirements of this Section. Such procedure shall provide that:

- (i) DBD may conduct investigations of compliance with the requirements of this Section and issue written notices to a contractor (or subcontractor under the contractor) when it determines based on such investigation that the contractor (or subcontractor) has not complied herewith;
- (ii) The contractor or subcontractor shall respond in writing to the notice of noncompliance;
- (iii) Based on the response, DBD may determine to rescind the notice of noncompliance or to conduct a Compliance

Meeting with the affected contractor or subcontractor at which any additional evidence may be presented;

- (iv) DBD shall make a written compliance determination following any Compliance Meeting. A determination that the contractor or subcontractor has not complied with the requirements of this Section shall state the basis therefore and shall advise the contractor or subcontractor of its right to file a written request with the County Manager within 30 calendar days to schedule an administrative hearing before a hearing officer to appeal the determination as provided below; and
- (v) A contractor or subcontractor who fails to respond to a notice of noncompliance, fails to attend a Compliance Meeting, or who does not timely request an administrative hearing from an adverse compliance determination made by DBD after a Compliance Meeting shall be deemed not to have complied with the requirements of this ordinance as stated in the notice or determination of non-compliance and, in the case of underpayment of the required overall per hour rate, an amount sufficient to pay any underpayment shall be withheld from contract proceeds and remitted to the employee and the contractor or subcontractor shall be fined the applicable penalty for such underpayment as provided in this subsection (d). A contractor or subcontractor who does not make the required payment of the underpaid wages or who does not pay any fine imposed hereunder shall not be deemed responsible to perform subsequent County construction contracts and shall be ineligible to be awarded such contracts for so long as the identified underpayment or any penalties imposed therefor remain outstanding, not to exceed three years. <<

Upon ~~[[failure of the contracting officer, the contractor (or subcontractor) and the complainant to resolve or negotiate a settlement of a complaint pursuant to said administrative procedures]]~~ >>timely receipt of a request for an administrative hearing before a hearing officer to appeal a determination of non-compliance<<, the County Manager shall appoint a hearing officer and fix a time for an administrative hearing thereon. A notice of hearing (together with a copy of ~~[[the written complaint]]~~ >>DBD's determination of non-compliance<<)) shall be served upon the contractor (or subcontractor) ~~[[against whom the complaint is made and upon the complainant]]~~. Upon completion of the hearing, the hearing officer shall submit proposed written findings and recommendations together with a transcript of the hearing to the County Manager within a

reasonable time. The County Manager shall determine whether the contractor (or subcontractor) failed to comply with ~~[[such contract specifications]]~~ >>the requirements of this ordinance<< ~~[[as alleged]]~~. If the Manager's determination is that the contractor (or subcontractor) ~~[[substantially or repeatedly]]~~ failed to comply >>and that such failure was pervasive, the Manager may order that the contract work be suspended or terminated, and that<<, the noncomplying contractor (or subcontractor) and the principal owners thereof ~~[[shall]]~~ be prohibited from bidding on or otherwise participating in County contracts for the construction, alteration and/or repair, including painting or decorating of public buildings or public works for a period of >>up to<< three (3) years. >>In addition, in the case of underpayment of the required overall per hour rate, an amount sufficient to pay any underpayment shall be withheld from contract proceeds and remitted to the affected employees and the contractor or subcontractor shall be fined the penalties provided below.<< If the Manager's determination is that the contractor (or subcontractor) failed to comply and >>that<< such ~~[[noncompliance was not a substantial or repeated occurrence]]~~ >>failure was limited to isolated instances and was not pervasive<<, the County Manager may >>, in the case of underpayment of the required overall per hour rate,<< order an amount equal to the amount of such underpayment be withheld from the contractor and remitted to the employee >>, and<< ~~[[In addition, the Manager]]~~ may ~~[[order payment of liquidated damages to the County]]~~ >>also fine the contractor or subcontractor for such noncompliance as follows: for the first underpayment, a penalty in an amount equal to 10% of the amount thereof; for the second underpayment, a penalty in an amount equal to 20% thereof; for the third and successive underpayments, a penalty in an amount equal to 30% thereof. A fourth violation, shall constitute a default of the subject contract and may be cause for suspension or termination in accordance with the contract's terms and debarment in accordance with the debarment procedures of the County. Monies received from payment of penalties imposed hereunder shall be deposited in a separate account and shall be utilized solely to defray DBD's costs of administering this ordinance.<< If the required payment is not made within a reasonable period of time, the noncomplying contractor (or subcontractor) and the principal owners thereof shall be prohibited from bidding on or otherwise participating in County contracts for the construction, alteration, and/or repair, including painting or decorating of public buildings or public works for a period of three (3) years.

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Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 3. It is the intention of this Board, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

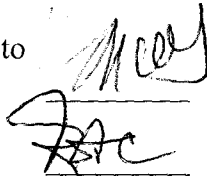
Section 4. This ordinance shall become effective 10 days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board. The County Manager shall prepare amendments to Administrative Order 3-24 in order to implement this ordinance. The requirements of this ordinance shall apply to contracts advertised (or, in the case of leases or contracts for privately funded construction on County-owned land to which this ordinance applies, to contracts executed) after the date this Board approves the implementing amendments to Administrative Order 3-24.

PASSED AND ADOPTED:

Approved by County Attorney as to
Form and legal sufficiency:

Prepared by:

R. A. Cuevas, Jr.

The block contains two handwritten signatures. The top signature is in dark ink and appears to be 'M. C. J.'. The bottom signature is in a lighter ink and appears to be 'R. A. C.'. Both signatures are written over horizontal lines.

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